

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 06-686C

(Filed: January 16, 2007)

)
CLARENCE JACKSON, <i>pro se</i> ,)
)
Plaintiff,)
)
v.)
)
UNITED STATES,)
)
Defendant.)
)

ORDER

In this action, the plaintiff Clarence Jackson seeks money damages from the government related to Mr. Jackson's experiences with the Department of Veterans Affairs, the National Labor Relations Board, and the Department of Health and Human Services over the past four decades. The government has moved to dismiss, invoking Rule 12(b) of the Rules of the Court of Federal Claims ("RCFC") and arguing that Mr. Jackson has failed to articulate a claim cognizable in this court. For the reasons stated below, the government's motion is granted.

BACKGROUND

Mr. Jackson's claims fall into three basic categories. First, he avers that the government has responded to his pursuit of studies in the field of law with a series of retaliatory acts directed against him. Compl. ¶ 6. Among other things, Mr. Jackson alleges that a theft occurred in 1989 "most likely by government agents" of \$1,200 worth of Mr. Jackson's clothing and \$5,000 worth of his law books. Compl. ¶ 6.

Second, Mr. Jackson avers that he has been improperly denied social security and workers' compensation benefits. He claims that for twenty years, seven relatives, comprising "[e]veryone in claimant[s] immediate family[, have received] a regular payment from the government except claimant." Compl. ¶ 5. In this respect, Mr. Jackson contends that he has been deprived of compensation and a pension related to a 1966 incident in which Mr. Jackson sustained knee-related injuries while working for Wabash Railroad. Compl. ¶ 3. Additionally, he asserts that the National Labor Relations Board entered rulings denying him benefits in other workers' compensation cases, including one against Wagner Casting Company and another

against the National Labor Relations Board itself. Compl. ¶ 8. Mr. Jackson also states that his own employment with the National Labor Relations Board was terminated in 1981. Compl. ¶ 2. Mr. Jackson apparently filed a suit concerning this termination in 1986 but did not prevail. Compl. ¶ 2. Mr. Jackson indicates that he started receiving social security benefits, in 1992, *id.* ¶ 5, but relates that the government “cut . . . off” these benefits in 1994. *Id.* His entitlement to social security benefits was apparently the subject of another lawsuit brought by Mr. Jackson, *Jackson v. Shalala*, No. 93-2263 (C.D. Ill. filed Nov. 23, 1993), in which Mr. Jackson was not successful. *See Jackson v. Shalala*, 12 F.3d 1100, 1993 WL 473688 (7th Cir. 1993) (unpublished table decision), *cert. denied*, 512 U.S. 1209 (1994).

Lastly, Mr. Jackson also avers that he has been unable to obtain veterans’ benefits. Compl. ¶ 4. He alleges that a knee condition was aggravated by a fall that occurred in March 1967 during his five days of active duty military service. Compl. ¶ 4 & App. V-3. Mr. Jackson asserts that the government, through “bad faith negligenc[ce],” destroyed those medical records pertinent to his claim for benefits. Compl. ¶ 4. Mr. Jackson notes that review of the denial of his benefits is currently pending before the Board of Veterans’ Appeals. Compl. ¶ 4.

JURISDICTION

“‘All federal courts are courts of limited jurisdiction,’ [and] [t]his court is no exception.” *Travelers Indem. Co. v. United States*, 72 Fed. Cl. 56, 59 (2006) (quoting *RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1461 (Fed. Cir.1998)). “Jurisdiction must be established as a threshold matter before the court may proceed with the merits of this or any other action.” *OTI America, Inc. v. United States*, 68 Fed. Cl. 108, 113 (2005) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 88-89 (1998)). “Should the court find that it lacks subject matter jurisdiction to decide a case on its merits, it is required either to dismiss the action as a matter of law or to transfer it to another federal court that would have jurisdiction.” *Travelers Indem.*, 72 Fed. Cl. at 59-60 (citing *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868); *Thoen v. United States*, 765 F.2d 1110, 1116 (Fed. Cir. 1985); *Gray v. United States*, 69 Fed. Cl. 95, 102-03 (2005)).

As plaintiff, Mr. Jackson bears the burden of establishing by a preponderance of the evidence that this court possesses subject matter jurisdiction over his claims. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); *see McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). In determining whether subject matter jurisdiction exists, a court must accept as true all undisputed facts asserted in the plaintiff’s complaint and “draw all reasonable inferences in favor of the plaintiff.” *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995); *see also Hamlet v. United States*, 873 F.2d 1414, 1415-16 (Fed. Cir. 1989).

Pro se claimants are held to a less stringent standard in pleading than that which is applied to formal pleadings prepared by counsel. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines*

v. Kerner, 404 U.S. 519, 520 (1972). Nonetheless, a *pro se* plaintiff must distinctly and affirmatively plead subject matter jurisdiction in the complaint. *See Henke*, 60 F.3d at 799.

Under the Tucker Act, the Court of Federal Claims has “jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). The Tucker Act itself, however, does not confer on a plaintiff a right to recovery. *United States v. Testan*, 424 U.S. 392, 398 (1976). To establish such a right, the plaintiff must also identify a substantive claim that “can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained.” *United States v. Mitchell*, 463 U.S. 206, 217 (1983) (citing *Testan*, 424 U.S. at 400).

Mr. Jackson’s complaint, even when liberally construed, fails to implicate a money-mandating constitutional provision, federal statute, or federal regulation under which this court may exercise jurisdiction. Mr. Jackson’s complaint might be viewed as an attempt to bring a claim under the Federal Tort Claims Act. *See* Compl. at 1. However, “[t]he Court of Federal Claims . . . lacks jurisdiction over tort actions against the United States.” *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) (citing 28 U.S.C. § 1491(a)). “Jurisdiction to hear tort claims is exclusively granted to the United States District Courts under the Federal Tort Claims Act.” *McCauley v. United States*, 38 Fed. Cl. 250, 264 (1997) (citing 28 U.S.C. § 1346(b)). Likewise, because Mr. Jackson’s claims of governmental retaliation against him would sound in tort, those claims would not fall within Congress’s statutory grant of jurisdiction to this court. *Brown*, 105 F.3d at 623.

Mr. Jackson’s allegations regarding his termination of employment by the National Labor Relations Board, *see* Compl. ¶ 2, might be construed as a claim for wrongful termination. In this respect, the comprehensive and integrated review scheme established by the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 111 (codified as amended in scattered sections of Title 5 of the United States Code), provides the only means of review for the types of adverse personnel actions it covers. *United States v. Fausto*, 484 U.S. 439, 454-55 (1988); *Romero v. United States*, 38 F.3d 1204, 1211 (Fed. Cir. 1994). Accordingly, Mr. Jackson’s grievance in this regard is outside this court’s jurisdiction.

Mr. Jackson might also be seen as challenging the cessation in 1994 of his receipt of social security benefits. *See* Compl. ¶ 5. Jurisdiction over claims for social security benefits inheres first in the Social Security Administration, and then any appeals must be filed in a district court. *Marcus v. United States*, 909 F.2d 1470 (Fed. Cir. 1990); 42 U.S.C. §§ 405(g) and (h). Any such claim cannot be heard in this court. In addition, this court has no power to review the decision of the United States Court of Appeals for the Seventh Circuit affirming a decision denying Mr. Jackson social security benefits. *Vereda Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001).

Although Mr. Jackson's complaint might also be construed as a workers' compensation claim, *see* Compl. at 1-2, decisions regarding benefit awards under the Federal Employees Compensation Act are entrusted to the Secretary of Labor or her designee and are not subject to judicial review. *Thaxton v. United States*, 11 Cl. Ct. 181, 182 (1986) (citing 5 U.S.C. § 8128(b)(2)). Likewise, this court lacks jurisdiction to proceed upon Mr. Jackson's workers' compensation cases related to his private-sector employment because they would not give rise to a "claim against the United States" or any of its agents. *See* 28 U.S.C. § 1491(a)(1); RCFC 4 Rules Committee Note (2002) ("only the United States is properly the named defendant"); RCFC 10(a) (in the complaint, the United States shall be "designated as the party defendant").

Mr. Jackson's complaint also might be read either as seeking veterans' benefits or as challenging the handling of his claim by the Department of Veterans Affairs. *See* Compl. ¶ 4. However, "[t]his court does not have jurisdiction to award veterans' benefits," *Ferreiro v. United States*, 72 Fed. Cl. 1, 6 (2006) (citing 38 U.S.C. § 511), nor may it review veteran benefit decisions of the Department of Veterans Affairs. *Collins v. United States*, 47 Fed. Cl. 196, 198 (2000) ("The Court of Appeals for Veterans Claims . . . has *exclusive* jurisdiction to review disability decisions of . . . the Department of Veterans Affairs." (citing 38 U.S.C. § 7252)).

Furthermore, with the exception of the denial by the Department of Veterans Affairs of the veterans' benefits Mr. Jackson sought, none of the events described by Mr. Jackson occurred within the six years prior to his initiation of the present suit. Thus, even if this suit would otherwise be able to proceed, Mr. Jackson's claims would largely be time barred. 28 U.S.C. § 2501 (establishing a six-year statute of limitations for claims in the Court of Federal Claims); *see Hart v. United States*, 910 F.2d 815, 817 (Fed. Cir. 1990); *see also Bath Iron Works Corp. v. United States*, 20 F.3d 1567, 1572 n.2 (Fed. Cir. 1994).

CONCLUSION

For the reasons stated, the government's motion to dismiss is GRANTED, and this case shall be dismissed without prejudice for lack of subject matter jurisdiction.¹ The Clerk shall enter judgment accordingly. No costs.

It is so ORDERED.

Charles F. Lettow
Judge

¹With his complaint, Mr. Jackson filed a motion for leave to proceed *in forma pauperis*. That motion is GRANTED.

Mr. Jackson also filed a Motion for Fees and Expenses on October 31, 2006. That motion is without merit and is DENIED.